

SEP 02 2009

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

VIRLYNN TINNELL  
CLERK SUPERIOR COURT  
BY: [Signature] DEPUTY

HONORABLE STEVEN F. CONN  
DIVISION 3  
DATE: SEPT. 1, 2009

SC\*  
VIRLYNN TINNELL, CLERK

COURT NOTICE/ORDER/RULING

STATE OF ARIZONA,  
  
Plaintiff,  
  
vs.  
  
WARREN STEED JEFFS,  
  
Defendant.

No. CR-2007-0743 & CR-2007-0953

Counsel for the Defendant has filed in each of these cases a Renewed Motion for Deposition of State's Witness Rebecca Musser or, in the Alternative, Motion for Sanctions for Disclosure Violations. The State has filed a Response and the defense has filed a Reply. The Court has received from defense counsel a letter dated August 27, 2009, a copy of which is indicated as having been provided to the State, stating that both counsel have agreed to submit this issue on the pleadings without any further argument. Sufficient time has passed that the State could have advised the Court if their position were otherwise.

How this issue got to this point is not real clear to the Court, although it is probably better understood by counsel. Some of the conclusions the Court reaches are based upon the following assessment of the court files. On February 3, 2009, defense counsel filed in both cases a Motion for Deposition of Witness Rebecca Musser, asserting that she was a material witness who had agreed to a personal interview but had refused in that interview to answer certain questions. The State filed on February 2, 2009, a Response which for some reason the



Court can find only in CR-2007-0743 and not in CR-2007-0953. In the Response the State agreed that Ms. Musser was a material witness but asserted that she was now willing to answer questions that she would not answer previously. The defense filed a Reply in both cases on February 9, 2009, indicating that counsel would attempt to set up another personal interview and that the motion could be held in abeyance. The Court entered a Minute Order dated February 12, 2009, deferring ruling in the defense motion unless requested in writing to do so.

At a hearing on March 30, 2009, according to the Minute Order from that hearing, there was discussion about a Deposition Order that had been submitted for Ms. Musser and an apparent acknowledgement that the Court had not yet ruled on the prior request for a deposition. The discussion at that hearing, however, appeared to focus not on the question of whether she would be deposed but when she would be deposed. It appears that the State had no objection to changing the date on the Deposition Order and that the Court did so and signed the Order. Inherent in that discussion would seem to be an acknowledgement by the State that a deposition was appropriate under the rules and under the circumstances of Ms. Musser's participation in the interview process. For reasons which the Court cannot explain, other than the fact that it bore only one cause number, that Deposition Order with the amended date was filed only in CR-2007-0743 and not in CR-2007-0953.

The date by which Ms. Musser was to have been deposed, April 30, 2009, has now come and gone. Although counsel may disagree in their respective assessments as to how this came to be, they seem to agree on 2 things. Ms. Musser has not participated in a further personal interview and she has not been deposed. She appears to be no closer to doing any one of these things than she was 5 months ago. The Court never amended its Order directing her to be deposed on April 30, 2009, and does not recall ever being asked to do so.

IT IS ORDERED granting the Defendant's Renewed Motion for Deposition of State's Witness Rebecca Musser.

The Court will sign the appropriate Order upon presentation by defense counsel. The Court will not address in defense counsel's Reply the request that the State be ordered to pay his expenses to go to Texas to depose Ms. Musser because the deposition will take place at a time and place of his choosing. If he chooses to do the deposition in Texas, then that is his problem. The Court will address any further request for sanctions only in the event that Ms. Musser fails to appear for the deposition at the time and place that the Court will dictate on the Order prepared by defense counsel.

cc:

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Honorable Steven F. Conn  
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